

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HOWARD HARRIS
Claimant

VS.

MESLER ROOFING
Respondent

AND

INSURANCE COMPANY OF NORTH AMERICA
Insurance Carrier

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Docket No. 205,147

ORDER

The claimant requests review of the preliminary Order Denying Compensation entered by Administrative Law Judge Floyd V. Palmer on October 11, 1995.

ISSUES

The Administrative Law Judge denied claimant's request that the respondent and its insurance carrier be ordered to pay temporary total disability compensation for the period of August 17, 1995 through October 25, 1995 because the Judge found claimant had not carried his burden of proving that his current complaints are causally connected to the claimant's November 15, 1993 work-related injury. The claimant requests review of that Order and contends his current condition is related to the original work-related injury of November 15, 1993. It is alleged that the Administrative Law Judge erred in not finding claimant entitled to temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the transcript of the preliminary hearing held on October 3, 1995, along with the exhibits submitted into evidence at that hearing and the briefs of the parties, the Appeals Board, for preliminary hearing purposes, finds:

For the reasons stated below, the Order of the Administrative Law Judge should be affirmed.

The question of whether there is a causal relationship between claimant's 1993 fall and his current condition gives rise not only to the question of the nature and extent of injury, but also gives rise to the issue of whether claimant has sustained personal injury by accident arising out of and in the course of his employment with respondent. Thus, the Appeals Board has the jurisdiction and authority to review this preliminary hearing order under K.S.A. 44-534a.

In proceedings under the Workers Compensation Act, the claimant has the burden to prove by a preponderance of the credible evidence the various conditions upon which claimant's rights depend. K.S.A. 44-501(a). See also Chandler v. Central Oil Corp., 253

Kan. 50, 853 P.2d 649 (1993). The provisions of the Workers Compensation Act shall be applied impartially to both employers and employees. K.S.A. 44-501(g). In determining whether the claimant has satisfied his burden of proof, the trier of facts shall consider the whole record.

Neither party introduced any expert medical testimony expressing an opinion concerning the question of whether there exists a causal relationship between the original accident and the claimant's current back, neck, hips and shoulders complaints. We have only the claimant's testimony in this regard which, in the current state of the record, is uncontroverted. Uncontradicted evidence which is not improbable or unreasonable cannot be disregarded unless shown to be untrustworthy and is otherwise ordinarily regarded as conclusive. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

Claimant suffered a compensable injury in 1993. However, it is not clear that it resulted in permanent impairment of function. Claimant testified that he has not had any intervening accident. Although he states that his symptoms had never actually resolved, claimant's physical activities since his 1993 accident are inconsistent with his alleged injury.

Claimant was terminated from his employment with Mesler Roofing in early January 1994 following his November 1993 injury. Respondent points out that since his medical release from his 1993 injury, claimant has been active by way of working for several subsequent employers and by participating in varsity football as an outside linebacker for Washburn University. Claimant contends that he never actually played in a game and mostly stood around during practices. Claimant concedes that he was released to return to work within days of his accident. He also was given physical examinations prior to playing football and prior to being hired by Davol in June 1995, both of which he passed.

The Appeals Board finds that the claimant's testimony that his current complaints are the result of his November 15, 1993 fall is improbable and unreasonable. The Appeals Board further finds that the claimant's current complaints are not a natural and probable consequence of the November 1993 work-related injury. Therefore, although the primary injury arose out of and in the course of claimant's employment with the respondent, his present condition is not compensable as a direct and natural consequence of the primary injury. See Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972).

For purposes of preliminary hearing, the Order by the Administrative Law Judge denying temporary total disability compensation should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order Denying Compensation of Administrative Law Judge Floyd V. Palmer dated October 11, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Judy A. Pope, Topeka, KS

Eugene C. Riling, Lawrence, KS
Michael Downing, Kansas City, MO
Judge Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director